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9 ERICA SANSBURY

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 ERICA SANSBURY,
13 Plaintiff,

14 vs.

15 PERFORMANT RECOVERY, INC.;
16 and DOES 1 through 10, inclusive,
17 Defendants.

Case No.:

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

(Unlawful Debt Collection Practices)

Demand Does Not Exceed \$10,000

18 **COMPLAINT**

19 ***I. INTRODUCTION***

20 1. This is an action for actual and statutory damages brought by plaintiff
21 Erica Sansbury, an individual consumer, against defendant Performant Recovery,
22 Inc. for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et*
23

24
25 COMPLAINT AND DEMAND FOR JURY TRIAL

1 *seq.* (hereinafter “FDCPA”), which prohibits debt collectors from engaging in
2 abusive, deceptive, and unfair practices.

3 ***II. JURISDICTION***

4 2. Jurisdiction of this court arises under 15 U.S.C. § 1692k(d). Declaratory
5 relief is available pursuant to 28 U.S.C. §§ 2201 and 2202. Venue in this District is
6 proper in that the Defendant transacts business here.
7

8 ***III. PARTIES***

9 3. Plaintiff, Erica Sansbury, is a consumer, a natural person allegedly
10 obligated to pay any debt, residing in the state of North Carolina.
11

12 4. Defendant, Performant Recovery, Inc., is a corporation engaged in the
13 business of collecting debt in this state with its principal place of business located
14 in Alameda County at 333 North Canyons Parkway, Suite 100, Livermore,
15 Alameda County, California 94551. The principal purpose of Defendant is the
16 collection of debts in this state and Defendant regularly attempts to collect debts
17 alleged to be due another.
18

19 5. Defendant is engaged in the collection of debts from consumers using the
20 mail and telephone. Defendant regularly attempts to collect consumer debts
21 alleged to be due to another. Defendant is a “debt collector” as defined by the
22 FDCPA, 15 U.S.C. § 1692a(6), and the Cal. Civ. Code § 1788.2.
23
24
25

IV. FACTUAL ALLEGATIONS

6. The debt that Defendant is attempting to collect on is an alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services, which are the subject of the transaction, are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

7. Within one (1) year preceding the date of this Complaint, Defendant, in connection with the collection of the alleged debt, contacted Plaintiff and threatened to garnish Plaintiff's wages.

8. Defendant has no standing to commence garnishment proceedings on behalf of the creditor.

9. Defendant is a debt collection company and as a debt collection company attempting to collect on an alleged debt, Defendant can only refer the matter back to the creditor with a recommendation that the original creditor attempt legal proceedings which could result in garnishment.

10. The representations made to Plaintiff by Defendant regarding garnishment were false.

11. The natural consequences of Defendant's statements and actions was to unjustly condemn and vilify Plaintiff for her non-payment of the debt she allegedly owed.

1 12. The natural consequences of Defendant's statements and actions was to
2 produce an unpleasant and/or hostile situation between Defendant and Plaintiff.

3 13. The natural consequences of Defendant's statements and actions was to
4 cause Plaintiff mental distress.

5 14. Defendant utilized unfair and unconscionable means to collect on
6 Plaintiff's alleged debt, by lying to and misleading Plaintiff.
7

8 **V. CLAIM FOR RELIEF**

9 15. Plaintiff repeats and realleges and incorporates by reference to the
10 foregoing paragraphs.
11

12 16. Defendant violated the FDCPA. Defendant's violations include, but are
13 not limited to, the following:

14 (a) Defendant violated §1692d of the FDCPA by engaging in conduct
15 the natural consequences of which is to harass, oppress, or abuse
16 any person in connection with the collection of an alleged debt;
17 and
18 and

19 (b) Defendant violated §1692d(2) of the FDCPA by using obscene or
20 profane language or language the natural consequences of which is
21 to abuse the person hearing or reading the communication in
22 connection with the collection of an alleged debt; and
23
24
25

1 (c) Defendant violated §1692e of the FDCPA by using a false,
2 deceptive, or misleading representation or means in connection
3 with the collection of the alleged debt; and

4 (d) Defendant violated §1692e(4) of the FDCPA by giving the false
5 representation or implication that nonpayment of the alleged debt
6 will result in the garnishment of wages of any person when such
7 action is unlawful and the Defendant does not intend to take such
8 action; and
9

10 (e) Defendant violated §1692e(5) of the FDCPA by threatening to take
11 action that the Defendant does not intend to take and/or the
12 Defendant cannot legally take; and
13

14 (f) Defendant violated §1692e(10) of the FDCPA by using false
15 representation or deceptive means in connection with the collection
16 of the alleged debt; and
17

18 (g) Defendant violated §1692f of the FDCPA by using unfair or
19 unconscionable means in connection with the collection of an
20 alleged debt.
21

22 17. As a result of the foregoing violations of the FDCPA, Defendant is liable
23 to the plaintiff Erica Sansbury for actual damages, statutory damages, and costs
24 and attorney fees.
25

1 WHEREFORE, Plaintiff Erica Sansbury respectfully requests that judgment
2 be entered against defendant, Performant Recovery, Inc. for the following:

3 A. Declaratory judgment that Defendant's conduct violated the FDCPA.

4 B. Actual damages.

5 C. Statutory damages pursuant to 15 U.S.C. § 1692k.

6 D. Costs and reasonable attorney fees pursuant to 15 U.S.C. § 1692k.

7 E. For such other and further relief as the Court may deem just and proper.
8

9 **DEMAND FOR JURY TRIAL**

10
11 PLEASE TAKE NOTICE that plaintiff Erica Sansbury demands trial by jury
12 in this action.

13
14 Respectfully submitted this 3rd day of March, 2014,
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17 **PRICE LAW GROUP APC**

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20 By: /s/ G. Thomas Martin, III
21 G. Thomas Martin, III
22 Attorney for Plaintiff
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